INTERSTATE COMMERCE COMMISSION.

IN RE THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY ET AL.

OPINION ON PETITIONS FOR RELIEF UNDER SECTION FOUR OF THE ACT TO REGULATE COMMERCE.

WASHINGTON, JUNE 15, 1887.

THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE.

INTERSTATE COMMERCE COMMISSION.

WASHINGTON, *June* 15, 1887.

IN THE MATTER OF THE PETITIONS OF THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND OTHERS.

OPINION OF THE COMMISSION.

COOLEY, *Chairman.*

The Louisville and Nashville Railroad Company was one of the first to apply for relief under the fourth section of the Act to regulate commerce, which, after declaring the general rule that more shall not be charged or received in the aggregate by a common carrier subject to the law, for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer, proceeds then to authorize exceptions, and confers upon the Commission certain powers in respect thereto.

From the first there have been two opinions regarding the proper construction of this provision for exceptions; one view being that no exception can be lawful unless made with the sanction of the Commission; and the other, apparently better supported on the words of the statute, that an order of relief is not required when the circumstances and conditions are substantially dissimilar, since the carrier, in acting upon them, would commit no breach of law, though it would be responsible in case it were found that the circumstances and conditions were misconceived or misjudged. Under this last view the order for relief would be needful only when the case was not one of plainly dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge.

The Commission is informed that the interstate roads north of the Potomac and the Ohio and east of the Missouri, with substantial unanimity, have conformed to the requirements of the fourth section by putting in force tariffs rearranged accordingly. Some friction was

manifested for a time, arising largely from the discontinuance of special rates, favors, and privileges, and from the adoption of new classifications; but where the fourth section has been thus made operative very few instances have come to our attention of injury thereby occasioned.

The roads which anticipated especial injury to commerce from the strict enforcement of the law were principally those situated in the Southern States and the transcontinental lines. After a little time some of the north and south roads in the territory first mentioned found themselves excluded to a certain extent from business which they had previously handled, but these instances were not numerous, so far as the Commission is at present advised.

In the cases where loss of revenue to the roads and injury to the business of the country was most seriously anticipated, the railroad companies, although some of them took the ground that the statute contemplated they would determine for themselves the exceptional cases in which they might make a lower charge for a longer haul, nevertheless were unwilling to incur the peril of so arranging their tariffs that they would in any instance conflict with the general rule which the act prescribed, apparently deeming it more prudent to suffer temporary loss of traffic until the act could receive authoritative construction than to subject themselves to heavy penalties in case it should finally be held that the general rule must be applied in every case until the authority of the Commission for making exceptions had been given. The Louisville and Nashville Company was one of those which took this position, and upon its application a temporary order of relief was made. Following the making of that and of other like orders, the Commission proceeded to take a great amount of testimony bearing upon the question whether the several carriers relieved were warranted in making rates on their lines which were not in conformity to the statutory rule, and in doing so it invited light from all sources, and was glad to have the assistance, not only of the railroad companies, but of competing steamboat owners, of boards of trade, and of citizens generally, whatever might be their line of business. The fullest opportunity has been afforded to any citizen of the United States who desired to be heard upon the matter, to present facts personally or by affidavit, and arguments *viva voce*, in writing, or in print. The invitation has been quite largely accepted; the subject has been laid fully before us, and we have endeavored to give to it the consideration its importance demands.

In making the orders of temporary relief no opinion was expressed upon the question whether they were necessary for the protection of the carriers in case the circumstances and conditions were found to be in fact dissimilar. The railroad companies did not raise that question, but, as has been said, elected as a matter of prudence to apply for the preliminary order. No objection could well be taken to this course provided it should prove to be practicable for the Commission to

take up and in a reasonable time dispose of the several applications made to it; but it was almost immediately perceived that the number was to be so great that this would be quite out of the question. Each order for relief would necessarily be preceded by investigation into the facts, on evidence which in most cases would be best obtained along the line of the road itself. A single case might therefore require for its proper determination the taking of evidence all the way from the Pacific to the Atlantic, and this not merely the evidence of witnesses for the petitioning carrier, but of such other parties as might conceive that their interests or the interests of the public would be subserved either by granting the relief applied for or by denying it.

If the Commission were to give to the petitions the time needed for their proper determination, it would be compelled to forego the performance of judicial and other functions which by the statute were apparently assumed to be of high importance, and even then its authority to grant relief would be performed under such circumstances of embarrassment and delay that it must in large measure fail to accomplish the beneficial purposes which we must suppose the statute had in view. Assuming—as we must when the law provides for it—that it is important to the public interest that a privilege to charge more for the shorter haul than for the longer over the same line in the same direction, should be admitted in some cases, as had been the custom, the interruption of the privilege when the case was proper for it would presumptively cause mischief, and should not therefore be compulsory while the slow processes of an investigation were going on, especially as the particular investigation might itself be compelled to await the determination of many others. Moreover, an adjudication upon a petition for relief would in many cases be far from concluding the labors of the Commission in respect to the equities involved, for questions of rates assume new forms, and may require to be met differently from day to day; and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent, the Commission would, in effect, be required to act as rate makers for all the roads and compelled to adjust the tariffs so as to meet the exigencies of business while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This in any considerable State would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which should require its performance would render the due administration of the law altogether impracticable, and that fact tends strongly to show that such a construction could not have been intended.

We have listened, with an earnest desire to reach a just conclusion, to all the arguments presented on the construction of the statute, by those appearing either to advocate or to oppose the applications, and after mature consideration we are satisfied that the statute does not require that the Commission shall prescribe in every instance the ex-

ceptional case and grant its order for relief before the carrier is at liberty in its tariffs to depart from the general rule. The terms of the statute clearly lead to the opposite conclusion. It declares:

"It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance."

Here we have clearly stated what is unlawful and forbidden; and for doing the unlawful and forbidden act penalties are then provided. But that which the act does not declare unlawful must remain lawful if it was so before, and that which it fails to forbid the carrier is left at liberty to do without permission of any one. The charging or receiving the greater compensation for the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar circumstances and conditions; and therefore if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, since if the circumstances and conditions of the two hauls are dissimilar the statute is not violated. Should an interested party dispute that the action of the carrier was warranted, an issue would be presented for adjudication, and the risks of that adjudication the carrier would necessarily assume. The later clause in the same section, which empowers the Commission to make orders for relief in its discretion, does not in doing so restrict it to a finding of circumstances and conditions strictly dissimilar, but seems intended to give a discretionary authority for cases that could not well be indicated in advance by general designation, while the cases which upon their facts should be acted upon as clearly exceptional would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical, and this section may be enforced without serious embarrassment.

From the recital of the history of the framing of this section (which is given further on) it appears among other things that the proviso respecting orders for relief was devised by the Senate committee which originally drafted the section, and that it was an essential part of it as first proposed; the prohibitory part of the section being then quite stringent, but a discretion being conferred upon the Commission to relieve against its operation. Afterwards the words "under substantially similar circumstances and conditions" were inserted in the first sentence of the section. The proviso was perfectly intelligible so long as the leading clause contained a hard and fast rule against charging more for the shorter than for the longer haul. It was then obvious that a discretion was left to the Commission in the matter of relaxing the rule when different circumstances and conditions rendered such relaxation in its judgment proper. Had the section passed as it then stood, the exercise of such a discretion might have been entered upon by the Commission with a distinct understanding of the task imposed, even though

its adequate performance might have been out of the question; but modified as it now stands, the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful.

If any serious doubt of the proper construction of the clause of the statute now under review should, after careful consideration of its terms, still remain, it would seem that it must be removed when section 2, in which the same controlling words are made use of, is examined in connection. That section provides:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Here it will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section, as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject-matter with which section 4, where it is employed, has to do, namely, the charges for transportation service. It is not at all likely that Congress would deliberately, in the same act and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it would be essentially different from what it was as used in another. But beyond question the carrier must judge for itself what are the "substantially similar circumstances and conditions" which preclude the special rate, rebate, or drawback, which is made unlawful by the second section, since no tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law. The carrier judges on peril of the consequences; but the special rate, rebate, or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this, it must also when using the same words in the fourth section have intended that the carrier whose privilege was in the same way limited by them, should in the same way act upon its judgment of the limiting circumstances and conditions.

Most of the applications made to the Commission for relief may be said to be based upon a showing of dissimilar circumstances and conditions claimed to justify the larger charge for the shorter haul. The Commission was asked to find that such dissimilar circumstances and conditions existed, and the question was presented in a great variety of forms. Upon this question it was believed that investigation into the conditions of railroad service in the States south of the Ohio and east of the Mississippi would be particularly useful. In the system of rate-making practiced in that section, the making of a greater charge on interstate business to and from intermediate stations than to and from competitive points requiring a longer haul had been, it appears, substantially universal, and business men in the larger towns united with the carriers in asserting that the cessation of the practice would force a stoppage of trade to an extent that would be destructive of many considerable interests. That section, therefore, seemed to afford a proper field for an inquiry into the reasons supposed to justify the practice. When the investigation was concluded the reasons which had been advanced appeared to be substantially the following:

That the support and maintenance of a railroad ought properly to be borne by the local traffic for which it is supposed to be built, and the through traffic may justly be carried for any sum not below the actual cost of its own transportation.

That the cost of local traffic is greatest, and the charges for carrying it should be in proportion, and if they are so they will often result in the greater charge for the shorter haul.

That traffic carried long distances will much of it become impossible if charged rates corresponding to those which may properly be imposed on local traffic; and it must therefore be taken in recognition of the principle, accepted the world over, that traffic must be charged only what it will bear.

That the long hauls at low rates tend to build up manufactures and other industries without injury to the traffic upon which the rates are heaviest.

That charges on long hauls, which are less than the charges on shorter hauls over the the same line in the same direction, are commonly charges which the carriers do not voluntarily fix, but which are forced upon them by a competition from whose compulsion there is practically no escape.

On some one or more of these reasons each of the applications was planted.

On the construction which we give to the statute these several applications need not have been filed, and therefore they might now be withdrawn without further judgment. But though the carrier might have acted on the judgment of its managers, it would have been at the peril of the consequences, and as it elected not to assume the responsibility, but to apply to the Commission for a relieving order, it

may be proper to consider the application on its merits, especially as the question, What is a case of dissimilar circumstances and conditions within the meaning of the law? must in general be a mixed question of law and fact, upon which differences of opinion would be expected to arise. It is manifestly important to the public interest, as well as to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it, than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their applications, that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented, and leave out of view such other grounds of relief, if any, as are not yet formally brought forward.

I. The fact that the shorter haul is of local traffic and the longer is not we cannot accept as making out a case of dissimilar circumstances and conditions within the meaning of the statute. The claim to that effect which was advanced in support of one of the applications rests upon a theory that railroads are constructed for the special accommodation of the traffic along their lines respectively, and that consequently that traffic may be relied upon for their support, and may fairly be charged with all the items of cost and maintenance. Traffic originating at a distance and taken over the line may on this theory be justly transported at any rates the carrier may consent to accept not below the actual cost of movement, and the local shippers are not in position to complain that such rates, as compared with what they must pay, seem to discriminate unjustly. But this theory has very little foundation in fact. It is not true, as a general rule, that railroads are constructed in exclusive reliance upon local traffic; on the contrary, through traffic is also contemplated, and is sometimes expected to yield returns even greater than that which the local traffic is likely to give. And whenever a road is constructed with special regard to local traffic, it is very likely to be the case that the local communities take upon themselves especial burdens in aid of the construction. When they do so they may justly claim that their traffic should be favored if discrimination of any sort is to be admitted. There are cases also in which roads have been constructed with special regard to long-haul traffic, some of them with the aid of Government grants, and in such cases the theory lacks all plausibility. Indeed it may be said to become plausible in any case only when, after a road has been constructed, some new and unanticipated business is offered it for long haul, but at rates relatively lower than the local traffic is charged. It may be neither unreasonable nor unjust to accept the lower rates for the long haul traffic in some

cases on grounds stated further on; but it will not be because of any such inherent difference between long and short haul traffic as can make the latter chargeable with heavier burdens.

II. That the cost to the carrier of handling and transporting local traffic is greater than that of traffic carried long distances is a fact which may with greater reason, when the difference is considerable and clearly shown, be claimed to make out a case of dissimilar circumstances and conditions under the statute. Cost of the service is always an important element in the fixing of rates; and the evidence taken by the Commission tends to show—what indeed is well known and understood—that in proportion to amount and to the distance it is transported, the cost of the local traffic to the carrier is considerably the greater. This fact fairly establishes in favor of the carrier an equity entitling it to make for the more onerous service a greater proportionate charge. But it does not follow that the difference may be so great as to make the case an exception to the general rule the statute has prescribed. It is obvious that the statute intends that the greater charge for the shorter haul shall only be made in cases which on their facts are exceptional; and when the carrier shows the general fact that the local traffic is most expensive he thereby proves not the exception, but the rule. To establish the exception it would be necessary to go further and make proof that in the case of the particular traffic the difference in cost would be exceptionally great. Such cases sometimes arise. They occur on water as well as on land, and vessel owners on the rivers make the greater charge for the shorter haul in the same direction in many cases, defending their doing so with good reason on this very ground of greater cost, in making landings, &c. The carriers by land may sometimes justify the like charges with equal reason.

There is in the case, however, an inherent difficulty of no small moment. While cost, as has been said, is an element to be taken into account in the fixing of rates, and one of the very highest importance, it cannot for reasons well understood, be made the sole basis, but it must in any case be used with caution and reserve. This is not merely because the word "cost" is made use of in different senses when applied to railroad traffic; it being often used to cover merely the expense of loading, moving, and unloading trains, but also because, in whatever sense the word may be used, it is quite impossible to apportion with accuracy the cost of service among the items of traffic. First of all when it is undertaken there must be an apportionment between the passenger traffic and the freight traffic; and if we suppose this to be made with reasonable accuracy there must then be a like apportionment between the different kinds and classes of freight. Freight comes to a road in infinite variety; some heavy, some light, some in large packages, some in small; some perishable or of special value and requiring peculiar accommodations and care; it is picked up in varying quantities at numerous stations, to be carried differing distances, sometimes on

fast trains and sometimes on slow; the service is performed by men whose compensation differs, but the most of whom have something to do with all branches of the traffic, so that all assist in carrying it on over a road and by means of buildings, appliances, and equipment which have been provided for the whole. Any attempt to apportion the cost therefore would at the best and under the most favorable circumstances only reach an approximation. This is so well understood the world over that the propositions which from time to time have been made in other countries to measure the charges of the carrier by the cost of the carriage solely have always been abandoned after investigation.

We may well believe, therefore, that the statute, in its provision against the greater charge for the shorter haul, did not intend that a difference in cost which is practically universal, and could not possibly be arrived at with accuracy, should as a general fact be a governing consideration, to the extent that would support the greater charge for the shorter haul in the cases in which such greater charge was in general prohibited. Where there are no circumstances to make the short haul exceptionally expensive to the carrier, or the long haul relatively inexpensive, a difference in rates which reason and fairness will justify may still be made within the limitation of the statute; but to make out the exceptional case, in which the general rule of the statute may be disregarded on the ground that the circumstances and conditions are not substantially similar, the difference in cost should itself be exceptional, and be capable of proof amounting to practical demonstration.

In support of one of the applications presented to us the carrier was able to make a showing of lower cost on long-haul freight more clear and distinct than is commonly possible. The showing was that the through business on its 450 miles of road was transacted by different trains from the local; that these moved much more rapidly and carried vastly the most freight to the train; that the number of men required was much less in proportion, not only upon the trains, but for the station and terminal service, and consequently all the items of expense were much smaller. These facts, which were apparent to the customers of the road, together with the peculiarly effective water competition, which affected principally the through traffic, influenced intelligent men doing business at local stations to admit, in giving evidence, that it might be just, and even necessary in some cases, that the charge for the shorter haul should be the greater. The disproportion, it was insisted, had been too great; but when the question is one of degree, regulation rather than prohibition must be admitted to be the appropriate remedy; and the carrier must keep in mind that if the right be established in any case to make the greater charge for the shorter haul, it is not a right to make a charge not just or reasonable in itself, or one which will work unjust preference between individuals, localities, or

commodities. It is, on the other hand, a right grounded in justice, and must be so exercised that the result shall be equitable.

III. We have next the case of dissimilar circumstances and conditions supposed to be made out by a showing that property now transported long distances at very low rates could not be transported at all unless concession in rates were made to it. This is a common fact in railroad transportation; the cases are to be met with in the traffic of all the long lines. The necessity for making concessions to long-haul traffic in the case of articles whose value in proportion to bulk or weight is small, and especially in that of the necessaries of life, which are handled in large quantities, and in the supply of which the most distant countries compete, has long been conceded wherever railroads exist. The household goods of immigrants to the West have been carried for them at very low rates, and the results of their agriculture have afterwards been taken for seaboard and European markets in recognition of the general principle that the traffic must not be charged rates beyond what it can bear. This is a just and sound principle when justly applied; and the country may be said not only to have acquiesced in its recognition, but to have desired and urged its application in a great variety of cases. Any suggestion that it was meant by the statute to abrogate it would scarcely be plausible, especially since, when not misapplied, it can harm no one, but may be, and often is, of great and manifest advantage, in enabling distant sections of the country to come into closer commercial relations, and to exchange to their mutual benefit their dissimilar productions, or to compete with each other in those which are similar.

But the cases must be very rare in which the larger charge in the aggregate for the shorter haul of the same kind of property over the same line in the same direction could be justified, when no other reason supported it than the fact that the traffic for the longer haul would bear no more. Manifestly such a discrimination when not imperative on other grounds is unjust; and the injustice becomes oppression when the effect is to increase the burden upon the traffic which has the shorter haul. There is a plain limit to the application of the principle that property is to be carried at rates it will bear; and the limit is reached when the rates charged are so low that further reduction would necessitate an increase of the charges upon other traffic in order to make up to the carrier such loss as the reduction causes. If some common vegetable, worth but five cents a hundred pounds more at a market a thousand miles distant than it is where it is grown, were to be transported that distance for the sum named, the producer nearer the market if subjected to a higher charge would have a right to complain that not only did the discrimination reduce the market value of his produce, but that the acceptance of the unreasonably low rates from the distant producer had a tendency to increase the charge for the shorter haul, so

as to make it not only relatively, but, when considered by itself, unreasonably high.

It is a matter of public notoriety that a belief has prevailed to a considerable extent that long haul traffic was in many cases carried at a loss; that the carriers were enabled to take it by making the charges for short haul traffic greater than would otherwise be necessary or reasonable, and that this constituted an abuse that ought to be corrected by law. Persons who did not hold to this belief have, on the other hand, taken low charges on long haul traffic as a proper measure for all charges, and have insisted that if the railroads could accept the low charges for one class of business they could and ought to do so for all classes. And this, as a rule, would be quite true if the railroads had it in their power to make the rates for all; which, however, is far from being the fact. There are many cases in which they have the option only to take the traffic at rates prescribed by its owners, or not to take it at all. But in respect to such cases, we must repeat, by way of emphasis, that a successful appeal cannot be made to the equity of the statute on the mere ground that long-haul traffic will not bear higher rates, if in fact those it can bear, if accepted, will cause a loss to the carrier which must be made up on short-haul traffic. To have one's property carried at a loss would not be matter of right, but of favor; and favors in transportion are not to be granted to any one class at the expense of any other.

IV. The greater charge for the shorter haul has been in some cases defended, on the ground that manufactures and other industries were thereby favored and built up. But a question likely to arise in such cases is whether that which is done for some is not at the expense or to the unjust prejudice of others. The statutes of some of the Southern States seek to encourage manufactures by permitting special rates to be made in their favor; and railroad companies, in some cases which were brought to our notice, have entered into contracts with parties proposing to establish large manufactories or otherwise engage extensively in business whereby, in consideration of the investment of some named sum in the proposed enterprise, they agree that favorable rates, which are specified, shall be given on its traffic for a term of years. The purpose of such laws and such contracts is no doubt commendable, but the practical difficulty of giving them effect without prejudice to the interest of others is always found to be serious. Very often they tend to the benefit of large establishments and to the prejudice of small. Manufactures are infinite in variety and extent, and, while it might be easy for those whose transactions were large to obtain the benefit of an impartial law made for the encouragement of all, the small establishments, sending out their goods in small lots and irregularly, might find the law practically of little or no value. The railroad companies, not unwilling to make long-time contracts for rates which contemplate a large business, would scarcely be

expected to stipulate for them with the small establishments, which exist in variety in every town and hamlet.

As a matter of fact the laws and the contracts which are made for the benefit of manufactures usually contemplate not all kinds of manufactures, but only those leading and most prominent kinds which require large capital, and whose operations are on an extensive scale. Encouragement to these is of public advantage when it wrongs no one; but it is just as much the duty of the common carrier in making its low rates on long hauls to consider whom they may ruin as whom they may build up; and while the carrier cannot be held responsible for the consequences which flow legitimately from tariffs impartially arranged, it cannot justify on the ground of public benefit the unequal rates which, however beneficial to some, may be equally mischievous to others. A great establishment, strengthened by the favor of the public carriers until it acquires the power to crush competition and actually exercises that power, may by that very fact become an enemy to the civil state; and no benefit it can give to the public in the low prices of its commodities or otherwise can compensate for the general sense of wrong which those must feel who are injured by it, or for the sentiment which grows up in view of its operations, that the law fails to give the equality of right and privilege which it nominally promises. That some such great establishments have been fostered by the aid of the railroad companies is commonly believed; and provisions against unjust discriminations in this statute had for their object, among other things, to bring this mischief to an end. The plausible excuse of public benefit, if it ever had force in such cases, has none now, for the statute forbids what public sentiment had already condemned.

It was shown by the evidence that the rates upon long hauls were such as would admit of the pine lumber of Mississippi being sold in Wisconsin in competition with lumber there cut, and of the iron of Alabama being carried through Pittsburgh to Eastern manufactories. If the lines originating in Wisconsin and Pennsylvania give to the producers of those States corresponding rates for the traffic in the other direction under similar circumstances, this will prejudice no one; but, on the contrary, may operate to the public advantage, provided always that the rates actually charged are compensatory. The petitioner in this case claims that in no case does it carry such long-haul traffic at rates which fall below cost. By this, however, is meant only the cost of movement of the particular traffic, leaving out of view the fixed charges of the road, which must, in any event, be provided for, whether the long-haul traffic is or is not taken. This distinction between the cost of movement and the fixed charges often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculation for business to meet the whole cost of operation in reliance upon such traffic as was then

apparent or probable. The fixed charges of the road may, for purposes of illustration, be assumed to equal one-half of the whole, the cost of movement of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin for profit, and were so laid that all traffic would contribute towards both fixed charges and cost of movement. But now comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little if anything more than half what is paid by other traffic. But taking it will not increase perceptibly the fixed charges of the road, because those are made up of items that must be paid whether the traffic is large or small. What is added to the cost by taking it is simply the expense of its own handling and movement; and upon the supposition made, there might perhaps be gain to the road instead of loss in taking it at anything above half the rates which are levied upon other traffic corresponding to it in classification. It might therefore be carried at such rates without wrong to any one. But if it were carried at lower rates still, not only would the other traffic be left to pay the fixed charges and the cost of its own movement, but it would also, to some extent, be burdened with the cost of movement of the long-haul traffic thus added to the business of the road.

The injustice of this would be very apparent, and it would become intolerable if some portion of the short-haul traffic was competitive to the long-haul traffic, and was so heavily taxed by higher rates as to make continuance impossible. It is very plain that an unrestricted power to make such rates is liable to infinite abuses, and that it may as easily be made use of to injure one enterprise as to build up another. In the earnest and sometimes unreasoning rivalry of railroad companies, it has no doubt often been employed as much to give mere volume to business as for any anticipated net revenue; and the wrongs have in such cases far exceeded any possible advantages that could accrue either to the roads themselves or to the public. It cannot be supposed that in any case the true interest of a road will be prejudiced by its being held strictly to the rule that excessively low rates on some traffic are not to be compensated for by excessively high rates on other traffic. And if rates are so graded as to violate the statutory general rule, it cannot be accepted as justification for the higher rates on the shorter haul that the lower rates on the longer haul had encouragement to manufacturers or other industries for their motive.

V. The chief ground on which the applicants pressed for relief from the long and short haul clause of the statute was that competition forced the railroad companies to make rates to and from connecting points to the level of which it was not possible to bring the charges at non-competitive points, because the doing so would cause such reduction of revenues as would force roads into bankruptcy and ultimately into suspension. It was, therefore, as was said, inevitable that in a great number of cases the greater charge should be made for the

shorter haul; and nothing but putting a stop to competition by law would prevent it. This it was insisted the new law does not attempt or intend. On the contrary the importance of competition in fostering and regulating the internal commerce among the States is clearly noted. In the sixth section carriers are permitted to reduce their rates at any time, but are forbidden to raise them except after giving ten days' notice. In the fifth section the pooling of freight is forbidden, unquestionably because the practice was regarded as having a tendency to prevent or check competition. The act studiously omits to bring the steamboats and other independent water lines within its control, and must, therefore, have contemplated the continuance not only of competition, but of those things which competition renders inevitable. The existence of competitive forces to an extent that the railroad companies at competitive points are unable to control, it was therefore argued, would make out a case of circumstances and conditions so dissimilar to those prevailing at non-competitive points as might justify the making of the greater charge for the shorter haul which was in general prohibited.

The competition which was brought to our attention as having this imperative force was, *first*, the competition of railroads with water-ways; *second*, the competition of railroads with other railroads which are not subject to the provisions of the "Act to regulate commerce"; *third*, the competition with each other of railroads which are subject to that act; *fourth*, the competition of business or trade centers with each other, operating indirectly upon the roads which form their channels of trade; and, *fifth*, the competition of business interests in like manner operating upon the roads, by whose assistance the business is carried on. This fifth species of competition has already been remarked upon to some extent, and it has been seen that it will not justify a railroad company in discriminating between its own customers to an extent that would create an exception to the general rule the statute prescribes. We pass it now without further remark. The others demand at our hands due consideration.

I. It was fairly shown before us that instances exist, and may be found, along the routes of petitioner's lines in the States of Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Louisiana, where the competition of water-ways forces down the railroad rates below what it is possible to make them at non-competitive points and still maintain the roads with success or efficiency. The reason is that the carriers by water can perform the service at very much less cost than the carriers by land. The general fact is that railroad rates for the transportation of property must approximate closely those which are made between the same points by steamer, and the steamer rates are generally, if not invariably, much below what the railroads can afford to accept upon all their business. In such cases, if competition is maintained, more must be charged at interior points than can be obtained at the points of competition; and

if the competitive rates are such as are productive of some gain, however slight, the non-competitive points are likely to receive indirect advantage therefrom, while the competitive points have the larger and more direct benefit, and are afforded a choice of agencies in transportation whose rivalry may fairly be expected to keep the cost down to a minimum. The interior points may have no ground for complaint in such a case, provided the rates they are charged are in themselves just and reasonable, even though the effect be that in some cases more is charged for the short than for the long haul over the same line in the same direction. This general fact is recognized the world over; and of English railways it has been often remarked that some of them would be deprived of much of their value if they were not allowed to meet water competition by such concessions at the points of contact as the competition would compel.

The only question that fairly arises in regard to it is whether the competition is kept within proper bounds. Vessel owners produced evidence before us to show that the railroads put down their rates to a ruinous point in their determination to take the competitive traffic at all hazards, and eventually to crush out competition; and railroad managers retorted with evidence that the blame for unremunerative rates was upon their rivals. But the question of relative fault is not important now. Low rates are a necessity of the situation; and if railroads compete with water transportation either on the ocean or on the navigable rivers, they have no choice but to accept such rates. To compel the roads to observe strictly the general rule laid down by the fourth section would necessitate their abandonment of some classes of business in which their competition with water transportation is now of public importance. Vessel owners who appeared before us to oppose the applications made for relief, put their opposition in some cases explicitly on the ground that denying the applications would enable the vessel men to put up their own rates. This was to be expected, and is far from being blameworthy if in fact their business is not now reasonably profitable; but it is suggestive of the fact that the interest of the public and that of any class of public carriers is not in all respects identical.

It is more than probable that the complaints made by the vessel owners against certain of the railroads are to some extent well founded; that the railroads have not only made the rates at points of competition with vessels much too low in order that they might at all events obtain the business, but that this has been done in disregard alike of right and of true policy. This is only saying that in their wars of rates with vessel owners they have sometimes shown the same recklessness as in like wars among themselves; but the fact still remains that they must either be allowed to compete with vessel owners and make low charges for the purpose, or they must leave vessel owners in possession of the business without the check upon charges which competition would afford.

The question here is whether this limitation of competition was intended by the statute; or, on the other hand, did Congress intend that the existence of competition might in some cases make out the dissimilar circumstances and conditions which would support a greater charge for the shorter haul, even though it might be over the same line in the same direction, the shorter being included in the longer distance? On this subject the history of the proceedings in Congress which resulted in the adoption of the fourth section as it stands is instructive, and with such brevity as is practicable it is recited here, not as determining conclusively the construction of the section, but as showing beyond question that the benefits of competition were meant to be retained, and that exceptions to the rigorous general rule were provided for to meet the contingencies which the competition might create.

In the report of the Senate select committee, submitted January 18, 1886, known as the Cullom report, is found the following language:

No question connected with the problem of railroad regulation has given the committee more perplexity than that relating to the utility and expediency of legislation prohibiting a carrier from charging more for a shorter than a longer haul under any circumstances; not that we have any doubt as to the injustice of such a charge under most circumstances, but because it seems inexpedient to enforce such a regulation under all circumstances.

When the effect of the proposed prohibition is considered with reference to the whole internal commerce of the United States, and especially with reference to the necessity of preserving the prevailing cheap rates for long distance transportation, there is reason to fear that the result of rigidly enforcing the proposed regulation would be to stifle competition in numberless cases where it now exists and is to the general public interest, and perhaps to deprive the country of the benefits of the low through rates now and for years given to and from the tide-water, without practical or appreciable advantage to intervening points.

The bill introduced with the report contained the following provision upon this subject:

SECTION 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or property for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure, if such greater charge for the shorter distance constitute an unjust discrimination; but such greater charge for a shorter distance shall be presumptive evidence of unjust discrimination, which may, however, be rebutted by the common carrier.

Upon application to the Commission appointed under the provisions of this act, such common carriers may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time make general rules covering exceptions to any such common carrier in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier from the operation of this section of this act; and when such exceptions shall have been made and published they shall have like force and effect as though the same had been specified in this section.

Afterwards, and before debate, the committee on February 16, 1886, reported as a substitute for this bill another, in which the following language is found:

SEC. 4. That it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or prop-

erty subject to the provisions of this act for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure: provided, however, that upon application to the Commission, &c. * * * [substantially as before].

The formal discussion of the measure was commenced April 14, 1886, the chairman of the select committee opening the debate by a speech in which he said concerning the fourth section:

It is agreed that this is the principle that should be observed as a general rule. The committee found, however, that the principle was not of universal application; that there were cases in which the railroads were compelled to make lower rates for longer than for shorter distances by the great law of competition, which is stronger than any law we can make, and that in some cases it would be a great hardship to the public as well as the railroads to rigidly enforce the general principle.

It is perfectly clear that the intention of the original framers of the Senate bill was to leave it to the discretion of the Commission to exempt carriers from the operation of the rule in cases when the "great law of competition" made such a relaxation proper, having in view the interests of the carriers and the people.

On May 6, 1886, Senator Cullom moved to amend the section by striking out the words "covering exceptions to any such common carrier in cases when there is competition by river, sea, canal, or lake." He supported this motion by the suggestion that these words were not necessary, and that without them the Commission would have the same power and more. Senator Harris favored the amendment, as giving a broader discretion to the Commission, and it was adopted.

On May 12th, a motion was made by Senator Camden to change the phraseology of the first part of the section, so that it should read "of like kind of property under substantially similar circumstances and conditions." This amendment was agreed to as a substitute for a previous amendment proposed by Senator Camden, and with little additional debate.

The bill was finally passed on the part of the Senate, section 4 remaining substantially as above, with the insertion of the following:

But this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance.

The bill then went to the House of Representatives, and was referred to the Committee on Commerce. That committee reported as a substitute for it the bill before pending in the House, which contained the following provision upon the subject embraced in section 4 of the Senate bill:

That it shall be unlawful for any person or persons engaged in the transportation of property as provided in the first section of this act to charge or receive any greater compensation for a similar amount and kind of property, for carrying, receiving, storing, forwarding, or hauling the same, for a shorter than for a longer distance, which includes the shorter distance on any one railroad; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated by it under a contract, agreement, or lease by such corporation.

In opening the debate on July 21, 1886, Mr. Reagan, chairman of the House Committee on Commerce, severely criticised the fourth section of the Senate bill, saying that the closing part of the section substantially nullified the former part, while his proposed substitute contained an absolute prohibition.

The minority of the committee, four in number, opposed the substitution, and in their report the following passage occurs:

> Nor do the minority favor the provision prohibiting a greater charge for a shorter than a longer haul, as it was shown to a satisfactory degree, as we think, in the hearing that, where two competing points were connected by water as well as rail, it was impossible for the railroads to secure the traffic unless they made their rates as low as the water rates, and that while they might be able to do this on a portion of their traffic, it would be destructive of their interests to reduce all their rates to those which were forced upon them between certain points by the competition of the water routes.

It is obvious therefore that, in the House as well as in the Senate, it was understood that the existence of competition was intended to be included in the margin of discretion provided for by the Senate measure. The question as to this point was distinctly marked; the debate, so far as this section was concerned, was upon that basis. On July 30, 1886, the substituted bill was agreed to and passed on the part of the House. A conference committee was appointed, and at the second session of the Congress that committee agreed upon a report, which was presented to the Senate December 15, 1886. By this report the fourth section of the Senate bill was amended so as to read as it now stands.

The work of the conference committee was very elaborately and carefully performed. The two bills which were referred to it presented very clearly the views which had prevailed in the two houses respectively, on the general subject of relative charges on long and short haul traffic—the House view of an inflexible rule, forbidding absolutely the greater charge for the shorter haul, and the Senate view that the rule should be subject to exceptions when the circumstances and conditions required it. The conference committee accepted deliberately the Senate view, and presented it, in the report to the two houses. In the Senate the report, before adoption, was discussed, and what was proposed by it on this point of vital interest was very distinctly brought out and made prominent; and in the House, where also the report was adopted, nothing which was said by any one indicated that the situation was otherwise understood.

It is impossible to resist the conclusion that in finally rejecting the "long and short haul clause" of the House bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the fourth section as it had passed the Senate, both houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and, among others, in cases where the circumstances and

conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue. And water competition was beyond doubt especially in view.

In thus deliberately making provision for competition, even though it might be necessary to allow for the purpose exceptions to the general rule laid down in the statute, Congress must be supposed to have done so because the public interest required it. That competition is the life of trade is one of the most generally accepted of maxims; among its principal benefits is the protection it gives against extortionate charges. But legitimate, open, and fair competition was meant; not everything that has been done under the name of competition, and which in many cases has been equally destructive of public and of private right. Among the common abuses have been the granting of special favors in exceptional rates, rebates, drawbacks, &c., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has also been favoritism between places and communities as a result of violent competition; but this also is no longer permissible. Other similar wrongs will be referred to further on; but the wars of rates, under the excitement of which traffic is carried at a loss, to be made good by excessive charges on other traffic at other times, is not the least of those from which the public has suffered. And these wars are as indefensible when vessel owners are their objects as when made between the railroads themselves, and are not to be justified on any pretense of competition. Water transportation is entitled to such traffic as in fair rivalry and at fair prices it can take, and the railroads in competition with it must recognize this right and not recklessly attempt to preclude its exercise. It is true that while the roads are obliged to publish their tariffs and the carriers by water are not, the former are at a disadvantage in the competition; but possibly the law in this regard may be amended if justice shall be found to require it.

Every railroad company ought, when it is practicable, to so arrange its tariffs that the burden upon freights shall be proportional on all portions of its line and with a view to revenue sufficient to meet all the items of current expense, including the cost of keeping up the road, buildings, and equipment, and of returning a fair profit to owners. But it is obvious that, in some cases, when there is water competition at leading points, it may be impossible to make some portion of the traffic pay its equal proportion of the whole cost. If it can then be made to pay anything toward the cost, above what the taking of it would add to the expense, the railroad ought not, in general, to be forced to reject it, since the surplus, under such circumstances, would be profit. As has been tersely said by M. de la Gournerie, formerly inspector-general of bridges and railways in France, a railroad "ought not to neglect any traffic of a kind that will increase its receipts more

than its expenses"; and long-haul traffic which can only be had on these terms may sometimes be taken without wronging any one, when, to carry all traffic, or even the major part of it, at the like rates, would be simply ruinous. But we desire to apply generally to every kind of competition herein discussed the observation above made, that when competition leads to the transportation of property below actual cost, fairly computed, it ceases to be legitimate. Fair and reasonable competition is a public benefit; excessive and unreasonable competition is a public injury. Competition is to be regulated, not abolished. The other sections of the law of themselves imply ample authority for its regulation, and, in connection with the fourth section, support the interpretation that it is wholly inadmissible to press competition to a point where expenses are increased beyond the increase of income.

II. The question whether railroad competition with other railroads which are not subject to the control of this law, can present a case of dissimilar circumstances and conditions, within the meaning of section 4, may possibly be one of greater doubt. The classes of roads not thus subject, and whose competition might be severe, are the Canadian roads and roads which are entirely within the control of a single State. As regards the latter, it is not improbable that cases exist of roads not restrained by any long and short haul clause corresponding to the Federal statute, which are so situated in respect to rivals coming under the law of Congress as to be able to monopolize to the public detriment the traffic at important points of competition unless the latter are given equal freedom of action. We do not understand, however, that any of the pending applications are of this nature, and we therefore leave such cases to be considered when they shall be presented more directly. Competition with Canadian roads may, it is believed, present a case of dissimilar circumstances and conditions. Whenever such roads compete with roads in the United States for business between one part of our country and another, a state of circumstances arises and exists as to such business which justifies American roads in meeting such competition by a corresponding reduction of rates, without regard to the fact that in so doing the rates between the terminals may be reduced below rates to and from intermediate places which are otherwise reasonable and just in themselves. The fact that American roads are left free to meet such competition is of itself an assurance that no extensive war of rates is likely to be engaged in by the Canadian roads, or, if engaged in, to be long pursued.

III. The competition with each other of the railroads which are subject to the Federal law can seldom, as we think, make out a case of dissimilar circumstances and conditions within the meaning of the statute, because it must be seldom that it would be reasonable for their competition at points of contact to be pressed to an extent that would create the disparity of rates on their lines which the statute seeks to prevent. But we cannot now assume that no case has arisen or can

hereafter arise which on its own peculiar facts and in consideration of its special equities can be deemed to present a just claim under the statute.

First, it may be observed here that in some parts of the country it is not easy to separate railroad competition altogether from competition by the water-ways.

Water competition is not limited in force strictly to the points of contact of water and rail lines, but extends its influence to an indefinite distance therefrom, qualifying to greater or less extent the all-rail rates. But passing that consideration by, it will be found on investigation that cases will exist in which, unless the force of strictly railroad competition is allowed to create exceptions under the statute, an existing competition which is supposed to be of public interest must come to an end. And where that is the case the strong lines will in general be gainers at the expense and sometimes to the destruction of those which are weaker.

One such case is that of the railroad extending from Pittsburgh, Pa., parallel to the Pennsylvania Railroad as far as Youngstown, and thence to Ashtabula, Ohio, where, through connection with the Lake Shore, it gives to the people of Pittsburgh and Youngstown competition with the Pennsylvania road in their business to and from New York and New England. The peculiarity of the competition is, that the business on the roads respectively is started in opposite directions when destined to the same point, so that on east-bound traffic from Pittsburgh the haul by one road is shorter than from Youngstown and longer by the other. As the Pennsylvania road has the shorter line, it is in position to determine what the rates shall be and the longer line has no option but to conform to them. In making them the leading road gives to Pittsburgh lower rates than to Youngstown, as it justly should do, in recognition of the geographical position. But the other road must do the same, though over its line the traffic between Youngstown and the seaboard will have the shorter haul. There is nothing unreasonable or unjust in this; and if the longer line were to attempt a change which should reduce the rates from Youngstown to the level of those of Pittsburgh it would in doing so only open a war of rates in which all the advantages would be with its rival. Finding itself in this dilemma, it applied to the Commission for an order permitting a greater charge to made on traffic to and from Youngstown than is made on that to and from Pittsburgh, and its application is strenuously opposed by the Pennsylvania road, which insists that competition by this roundabout route is illegitimate and ought not therefore in any manner to be aided.

Whether this position is sound the Commission may determine hereafter. It is sufficient to say of the case at this time that it is one—and not a solitary instance—in which a strict application of the general rule laid down by the statute must be fatal to competition. If the competition in itself is illegitimate, it may be right to permit its destruction.

But it is not admitted by those interested in the road just mentioned that its case is of this nature. It is shown that it was constructed by Pittsburgh capital for the express purpose of the competition; and it appears that though the route is indirect, the competition has given it considerable business, and large investments have been made in reliance upon its continuance.

One fact obvious on the statement of this case is that the wrong against which the long and short haul clause of the statute is aimed is not to be found in it. When the greater charge for the shorter haul over the same line in the same direction is spoken of, the natural suggestion to the mind is of a line leading with some directness to the place to which the traffic is destined; and there seems to be in such greater charge a manifest unfairness, since it deprives the place of shipment nearest the destination of its proper advantage of situation. But in the case stated the position is the opposite to this; the greater charge for the shorter haul preserves the proper advantage of situation, and has in itself no element of injustice to localities. It is the situation which forces upon the road an unequal charge which is nevertheless not unfair, and a strict application of the statute must compel the surrender of what is now competitive traffic to the older and more direct route whose very conformity to the general rule precludes conformity by the competitor.

There are other cases in the country of roads now taking part in competitive traffic which the peculiarities of situation will compel them to abandon if the long and short haul clause of the statute is strictly applied. This to some extent might be the case with certain north and south roads, like the road from Cincinnati to Toledo, and that from New Albany to Chicago, which have heretofore engaged considerably in east and west bound traffic which they deliver to or receive from other roads crossing them, or at their terminals. In many cases these roads have been accustomed to make the greater charge for the shorter haul simply because the direction they run compels it; but in doing so they may wrong no one, because the rates are not determined by them but by the direct east and west lines, and are made with regard to relative distance. Both the roads named now have applications pending for relief from an embarrassment for which they are not themselves responsible; and they aver, with plausibility at least, that the public interest will suffer if they are shut out from such share in competition as they have hitherto taken. We do not pass upon these cases finally at this time, and, therefore, do not undertake to say of them that they constitute cases in which the competition of roads subject to the Federal law creates the dissimilar circumstances and conditions which make up an exceptional case. But this brief reference to the facts is suggestive of a possibility, at least, that the exceptional case may exist; and if it does exist a strict enforcement of the general rule might be found quite as injurious to the

public interests as to those of the railroads which would thereby be shut out from competition.

IV. Whether the competition of towns which are trade centers or distributing points can in any case make out the dissimilar circumstances and conditions independent of the competition of the carriers is a question which may be said to be presented by the evidence taken, but not with such distinctness as to call for an expression of opinion at this time. The pre-eminence of such trade centers in the territory reached by the petitioner's roads is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less-important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and non-competitive towns—the former being the "trade centers"—must have had some influence to increase steadily the disparity in growth and prosperity.

By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country it was said, are dependent on the trade centers for their supplies, and they get indirectly the benefit of low rates to the distributing points in lower prices than could otherwise be given to them. In proportion also as the distributing points are prosperous, they can and do extend to the dealers at other points credit and indulgence. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers, and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet as they do not, at the same time, feel a like pressure from non-competitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

One result is that towns recognized by railroad managers as trade centers come to be looked upon as towns with special privileges, and other towns strive for recognition as such, and complain perhaps of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases given to build up trade centers; and as they had had that effect, and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, *first*, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade center; and, *second*, if the discrimination has existed and has had its effect, the fact that large establishments have

thereby been encouraged is no reason why the injustice should be perpetuated. This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.

These general views will indicate as far as we deem at this time necessary the bounds within which the railroad managers must limit their action in making charges which are greater in the aggregate for the transportation of passengers or of the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance. With responsibility to the law and to the restraining power of the Commission in case the bounds are exceeded, it may confidently be expected that all carriers will bring themselves into conformity with the general law so far as it may be found reasonably practicable, and that the occasions for special interference will not be numerous. Our observation and investigations so far made lead to the conclusion that strict conformity to the general rule is possible in large sections of the country, without material injury to either public or private interests; and that in other sections the exceptions can be and ought to be made much less numerous than they have been hitherto, and that when exceptions are admitted the charges should be less disproportionate. Very many of the roads, as we are informed, have so arranged their tariffs as to make no exception whatever; and where that has been proved to be reasonably feasible, return to the former custom cannot be tolerated. In any case in which a company fails to bring its tariffs into conformity with the general rule, if parties whose interests are thereby unfavorably affected complain, it must be prepared to justify its action by a showing of circumstances and conditions which render it just and reasonable.

In the views above expressed the members of the Commission, after full consideration, are unanimous.

The order for temporary relief which was made in favor of the petitioner will be allowed to remain in force until the day originally limited for its expiration, and in the mean time its officers will have the opportunity to make thorough revision of its freight and passenger tariffs, in order to bring them as nearly as may be reasonably feasible into harmony with the general rule of the statute and with the views expressed in this opinion. That they may be brought much nearer to conformity than they now are without the sacrifice of any substantial interest, we have very little question; and as business adapts itself to the new principle established by Congress, it will no doubt be found that exceptions can safely and steadily be made less and less numerous.

The other applications for relief under this section which remain to be disposed of are as follows: Fifteen are by the Richmond and Danville Railroad Company, The East Tennessee, Virginia and Georgia Railroad Company, and other members of the Southern Railway and Steamship Association, which is an association of railroad and steamship companies operating lines of transportation in the territory south of the Ohio and Potomac and east of the Mississippi River. Eleven are by other railroad lines in the same territory, the Mobile and Ohio, "Queen and Crescent," Illinois Central, and others. Two are on behalf of companies in Louisiana and Texas. Seven are presented by the various transcontinental lines. One is in favor of the New York, New Haven and Hartford and other companies operating short lines in Connecticut, Rhode Island, and Massachusetts, which also seek relief against alleged water competition. One is filed by the Delaware and Hudson Canal Company, and another by the Rome, Watertown and Ogdensburg Railroad Company, in the State of New York, asking relief in respect to Canadian competition. Four are presented in behalf of the Pittsburgh and Lake Erie, the Cincinnati, Hamilton and Dayton, and two other roads similarly situated. One by the Mason City and Fort Dodge Company, a north and south road in the State of Iowa. Four are in behalf of certain roads in the vicinity of Peoria. Two are in behalf of roads in Southern Illinois, relating to their connections south of the Ohio. Three are by the Wisconsin Central and two other roads in Wisconsin and Minnesota. One by the New York, Philadelphia and Norfolk, in Delaware. One by the Memphis and Little Rock, in Arkansas; and one by the Detroit, Grand Haven and Milwaukee, in the State of Michigan.

The temporary orders which have been made on some of these petitions will in like manner be permitted to remain in force until the expiration of the time originally limited in each. No further order will be made upon any of the petitions, for although some two or three of the cases may not, by the facts recited in the applications for relief, be brought strictly within the principles above discussed, yet they all present what are claimed to be different circumstances and conditions adequate to authorize exceptions to the general rule; and if the petitioners are persuaded that the fact is as they represent, they should act under the statute accordingly.

The points that are intended to be decided at this time are as follows:

First. That the prohibition in the fourth section against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein is limited to cases in which the circumstances and conditions are substantially similar.

Second. That the phrase "under substantially similar circumstances and conditions" in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.

Third. That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts, to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.

Fourth. That the provisions of section one, requiring charges to be reasonable and just, and of section two, forbidding unjust discrimination, apply when exceptional charges are made under section four as they do in other cases.

Fifth. That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases:

1. When the competition is with carriers by water which are not subject to the provisions of the statute.

2. When the competition is with foreign or other railroads which are not subject to the provisions of the statute.

3. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.

Sixth. The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.

Nor that it is designed to build up business or trade centers.

Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up

The fact that long-haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.